

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Annual Assessment of the Status of)
Competition in Markets for the)
Delivery of Video Programming)

CS Docket No. 97-141

RECEIVED

AUG 20 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF
RAINBOW MEDIA HOLDINGS, INC.

Frank W. Lloyd
Michael B. Bressman
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
202/434-7300

Its Attorneys

August 20, 1997

No. of Copies rec'd. 024
List ABCDE

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Annual Assessment of the Status of)	CS Docket No. 97-141
Competition in Markets for the)	
Delivery of Video Programming)	

**REPLY COMMENTS OF
RAINBOW MEDIA HOLDINGS, INC.**

Rainbow Media Holdings, Inc. ("Rainbow") submits these reply comments in the Notice of Inquiry in the above-captioned proceeding to respond to some initial comments that have resurrected previous complaints about the program access rules and have cited recent program access disputes with Rainbow to support their claims. None of these comments, however, provides evidence that the existing program access rules are inadequate to implement the provisions of section 628 of the Communications Act of 1934. Instead, the evidence demonstrates that the program access rules are functioning as intended.

First, Ameritech New Media, Inc. ("Ameritech") alleges that the Commission's failure to resolve its program access complaint against Rainbow has resulted in "demonstrable competitive harm" to Ameritech.^{1/} Nothing could be further from the truth. Ameritech, through its programming packager Americast, has had access to Rainbow and SportsChannel Chicago programming since February 26, 1996, and to SportsChannel Ohio programming since June 5, 1996, well before Ameritech and Americast filed their program access complaint against

^{1/} Comments of Ameritech New Media, Inc. at 23 (filed July 23, 1997) ("Ameritech Comments").

Rainbow. Since filing the complaint, Americast has requested Rainbow programming for additional systems and service areas. Rainbow has accommodated each of these requests.

Moreover, the pricing dispute at the center of the complaint has not had a negative impact on Ameritech's cable business. Ameritech is currently serving 29 communities with an aggregate population of more than 1.6 million people.^{2/} According to its recent testimony before the House Telecommunications Subcommittee, "[i]n those areas where [it] offer[s] service, one out of every three families with cable television service has Ameritech New Media's *americast*TM service."^{3/} If these numbers are accurate, they represent an impressive level of penetration for a company providing video service for only a little more than a year.

Second, Bell Atlantic/NYNEX and other commenters have attempted to read more into Bell Atlantic's recent program access decision against Rainbow than is justified.^{4/} SportsChannel New York, a Rainbow programming service, was ready to negotiate with Bell Atlantic to license its service. It, however, was not willing to do so until Bell Atlantic returned a \$345,000 deposit that Rainbow had paid to Bell Atlantic to reserve channels on Bell Atlantic's video dialtone system. Bell Atlantic had discriminatorily denied Rainbow the service for which it had paid by refusing to provide the equipment and software necessary to access Bell Atlantic's video dialtone system. SportsChannel New York believed that Bell Atlantic's "history of defaulting" on

^{2/} Testimony of Deborah L. Lenart, President of Ameritech New Media, Inc., before the House Subcommittee on Telecommunications, Trade, and Consumer Protection at 1 (July 29, 1997).

^{3/} Id.

^{4/} See, e.g., Comments of Bell Atlantic and NYNEX at 2-3 (filed July 23, 1997) ("Bell Atlantic/NYNEX Comments"); Ameritech Comments at 27; Comments of the United States Telephone Association at 7 (filed July 23, 1997); Comments of BellSouth Corporation, et al. at 11 (filed July 23, 1997).

agreements justified denying its programming to Bell Atlantic. In other words, once Bell Atlantic proved that it would fulfill its agreements, SportsChannel New York would negotiate for a new agreement. The Cable Services Bureau disagreed with Rainbow's defense and instead ruled that the "issue of the channel reservation deposit is the subject [of] a separate, unrelated dispute between Rainbow and Bell Atlantic."^{5/} Thus, the Bureau simply concluded that Rainbow could not link the two complaints; instead, SportsChannel New York must sell its programming to Bell Atlantic now, and Rainbow must wait for financial relief on its deposit until later.

Finally, some commenters have attempted to use recent cable industry announcements to suggest that cable competitors will somehow find it more difficult to obtain access to satellite cable programming.^{6/} For example, the Wireless Cable Association ("WCA") complains about the recent TCI - Cablevision and Liberty Media - Fox Sports Network - SportsChannel transactions, describing the latter as "daunting."^{7/} It also alleges, without support, that wireless cable operators are "having trouble securing affiliation agreements with [non-vertically integrated] programming services" because they have "become more closely aligned with the very same cable operators whose stranglehold on local distribution is critical to the success of any programming service."^{8/} WCA posits that this alleged situation "will only become worse."^{9/}

^{5/} Bell Atlantic Video Servs. Co. v. Rainbow Programming Holdings, Inc., CSR-4983-P, Memorandum Opinion and Order, at ¶ 25 (rel. July 11, 1997).

^{6/} See, e.g., Comments of The Wireless Cable Association International, Inc. at 3-5 (filed July 23, 1997) ("WCA Comments"); Bell Atlantic/NYNEX Comments at 4-5.

^{7/} WCA Comments at 5.

^{8/} Id. at 10.

^{9/} Id.

WCA, however, ignores the fact that the Liberty Media - Fox Sports Network - SportsChannel deal will increase competition in the sports programming market and that the TCI - Cablevision transaction will allow Cablevision to provide expanded communications options for its consumers. The acquisition of more than 800,000 subscribers from TCI in the New York metropolitan area will provide Cablevision with the economies of scale and scope necessary to support substantial investments in a new generation of telecommunications and programming services. Cablevision will be able to expand its system capacity to more than 100 channels; continue to introduce commercial and residential telephone service and high-speed data transmission services to the New York metropolitan region; and offer video-on-demand. The Liberty Media - Fox Sports Network - SportsChannel deal combines the valuable sports programming of these companies to furnish the first truly national, regional, and local supplier of sports programming, offering a competitive alternative to ESPN.

Moreover, WCA has not provided any evidence that any satellite cable programming vendor that is or will become affiliated with Cablevision or TCI has refused to sell programming to any cable competitor.^{10/} These unfounded speculations should be disregarded by the Commission.

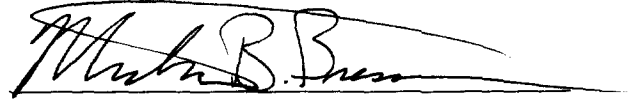
^{10/} In addition, WCA and other commenters are well aware that section 628 and the program access rules are limited to programming delivered by vertically-integrated satellite cable programming vendors or satellite broadcast programming vendors, and do not cover terrestrially-delivered programming.

Conclusion

For these reasons, the Commission should reject the arguments of Ameritech, Bell Atlantic/NYNEX, WCA, BellSouth, the United States Telephone Association, and others to amend the program access rules.

Respectfully submitted,

RAINBOW MEDIA HOLDINGS, INC.

A handwritten signature in black ink, appearing to read "Michael B. Bressman", written over a horizontal line.

Frank. W. Lloyd
Michael B. Bressman
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
202/434-7300

Its Attorneys

August 20, 1997

DCDOCS: 114175.3 (2g3j03!.doc)

CERTIFICATE OF SERVICE

I, Michael B. Bressman, hereby certify that on this 20th day of August, 1997, I caused copies of the foregoing "Reply Comments of Rainbow Media Holdings, Inc." to be served upon the following by first-class mail, postage prepaid or by hand(*):

Leslie A. Vial
Counsel for Bell Atlantic
1320 North Courthouse Road
8th Floor
Arlington, Virginia 22201

William B. Barfield
Thomas T. Rawls, II
Counsel for BellSouth Corporation, et al.
1155 Peachtree Street, N.E.
Suite 1800
Atlanta, Georgia 30309

Richard G. Warren
Counsel for the NYNEX Telephone
Companies
Room 3831
1095 Avenue of the Americas
New York, NY 10036

Deborah H. Morris
Ameritech New Media, Inc.
300 South Riverside Plaza
Suite 1800
Chicago, IL 60606

Paul J. Sinderbrand
Robert D. Primosch
Counsel for The Wireless Cable
Association International, Inc.
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Suite 600
Washington, D.C. 20006

Mary McDermott
Linda Kent
Keith Townsend
Hance Haney
Counsel for the United States Telephone
Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005

Lawrence R. Sidman
Jessica A. Wallace
Counsel for Ameritech New Media, Inc.
Verner, Liipfert, Bernhard, McPherson &
Hand, Chtd.
901 - 15th Street, N.W.
Suite 700
Washington, D.C. 20005

ITS*
1221 30th Street, N.W.
Washington, D.C. 20554

Meredith J. Jones*
Chief
Cable Services Bureau
Federal Communications commission
Room 918
2033 M Street, N.W.
Washington, D.C. 20554

A handwritten signature in black ink, appearing to read "Michael B. Bressman", with a long horizontal flourish extending to the right.

Michael B. Bressman